IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 413 of 2001

CRA.309/1995 of SESSIONS COURT, THALASSERY
CC.126/1994 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TALIPARAMBA

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PETITIONER/APPELLANT/ACCUSED:

T.KUMARAN,
THALIYARATH, TALIPARAMBA AMSOM,
KOOVODE DESOM, TALIPARAMBA.

BY ADV. SRI.ALAN PAPALI

RESPONDENTS/RESPONDENTS/COMPLAINANT:

1. M.R.PADMANABHAN,
S/O RAGHAVAN, NADUVIL AMSOM DESOM
KARUVANCHALAYIL, MEENPATTI
KANNUR DISTRICT.

2. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM.

BY ADV. SRI.C.KHALID
SRI.T.P.SAJID
PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

A.K.BASHEER, J.

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Crl.R.P.No.413 OF 2001

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Dated this the 26th day of November 2007

ORDER

Revision petitioner was concurrently found guilty under Section 138 of the Negotiable Instruments Act and he was convicted and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for one month.

2. The case of the respondent no.1/complainant was that petitioner/accused had borrowed a sum of Rs.25,000/- from him and in discharge of the debt, the accused had issued Ext.P1 cheque dated June 28, 1993. The said cheque was dishonoured when it was presented for encashment. Though a statutory notice was issued, the accused had failed to discharge the liability. It was therefore that the complaint was filed.

3. The complainant was examined as PW1 and the manager of the bank was examined as PW2. Exts.P1 to P6 were marked on his side. The revision petitioner/accused had examined a witness

as DW1. The case of the accused was that he had borrowed only a sum of Rs.10,000/- and issued a blank cheque in discharge of the above liability.

4. The trial court had elaborately considered the oral and documentary evidence and entered the finding that the prosecution has succeeded in establishing the guilt of the accused under Section 138 of the Act. The appellate court had re-evaluated the evidence on record and concurred with the finding entered by the trial court.

5. Having gone through the entire oral and documentary evidence in the case, I do not find any reason to take a different view. The accused had admitted his signature in the cheque. Though he had contended that he had borrowed only a sum of Rs.10,000/-, the said contention was not substantiated in any manner known to law. The evidence of DW1 was also not found to be credit worthy or acceptable. Having perused the materials on record, I do not find any illegality or irregularity in the concurrent findings entered by the courts below and therefore revision petition is liable to be dismissed.

6. At this stage, learned counsel for the petitioner submits that the petitioner is prepared to pay off the liability. It is brought to my notice that in the memorandum of revision petition itself the petitioner had stated that he was ready to settle the matter, if the complainant was willing to accept the cheque amount. The only prayer made on behalf of the petitioner is to grant him some reasonable time to make the payment. In view of the above, I am satisfied that the petitioner is entitled to get some reasonable time to pay off the liability.

7. Therefore, while confirming the order of conviction, the sentence is modified and petitioner is directed to suffer imprisonment till the rising of the court and to pay Rs.35,000/- as compensation under Section 357(3) of the Code of Criminal Procedure and in default of payment, to suffer simple imprisonment for six months.

8. Petitioner shall appear before the trial court on January 5, 2008 and remit the said amount of Rs.35,000/-. The learned Magistrate shall ensure that petitioner undergoes imprisonment till the rising of the court on that day. The amount if deposited

shall be released to the complainant.

9. If the petitioner fails to appear and remit the amount as directed above, the court below shall execute the sentence forthwith.

Crl.R.P. is disposed of as above.

(A.K.BASHEER, JUDGE)

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